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## OLR Bill Analysis

### sSB 451

#### ***AN ACT CONCERNING GOVERNMENT ADMINISTRATION AND STATE CONTRACTING.***

#### **SUMMARY:**

This bill makes several unrelated changes affecting government administration. It requires municipalities that (1) have populations greater than 70,000 and (2) do not already have their own set-aside program to participate in the state set-aside program for small and minority contractors. It also expands the janitorial work program for people with a disability or disadvantage to include services deemed appropriate by the Department of Administrative Services (DAS) commissioner, including laundry and cleaning services, mail supply room staffing, data entry, call center staffing, and other services specified by the commissioner. By law, the program must create and expand work opportunities, specifically full-time jobs or full-time equivalents at standard wage rates, for people with a disability (excluding blindness) and people with a disadvantage (see BACKGROUND: *Person With a Disadvantage*).

The bill revamps the process for contracting with manufacturers and metal fabricators for DAS-administered public works projects. It requires DAS, rather than the general contractor or construction manager at-risk, to select and enter into contracts with manufacturers and fabricators. DAS must (1) use generally the same process that it uses under existing law for awarding consultant services contracts and (2) give a geographic preference to certain manufacturers and fabricators. The bill also subjects certain manufacturer and fabricator services contracts to review and approval by the State Properties Review Board.

The bill establishes (1) October 30 as Are You Dense? Breast Cancer Awareness Day and (2) October 9 as Neurological Disorders

Awareness Day. It requires suitable exercises to be held in the State Capitol or elsewhere as the governor designates (§ 1). It specifies that the Department of Rehabilitation Services (DORS) can accept a bequest or gift of money. The department can already accept a bequest or gift of personal property and a devise or gift of real property (§ 2).

Lastly, the bill eliminates a prohibition on direct involvement, by nonclerical employees in the DAS unit that acquires, leases, and sells real property, in any enterprise that (1) does business with the state or (2) is concerned with real estate acquisition or development. Such employees remain subject to the State Code of Ethics, which, among other things, prohibits state employees from accepting outside employment that (1) is in substantial conflict with their state duties, (2) impairs their independence of judgment regarding their state duties, or (3) encourages them to disclose confidential information (§ 17).

The bill also makes technical and conforming changes.

EFFECTIVE DATE: October 1, 2014, except for the sections concerning the awareness days, DORS, and employees in DAS's property unit, which are effective upon passage.

### **§§ 3-6 — SET-ASIDE PROGRAM**

Under current law, state agencies and political subdivisions, other than municipalities, must set aside 25% of the total value of all contracts they let for construction, goods, and services each year for exclusive bidding by certified small contractors (SBE). The agencies must further reserve 25% of the set-aside value (6.25% of the total) for exclusive bidding by certified minority business enterprises (MBE) (see BACKGROUND: *Definitions of SBE and MBE*).

The bill requires municipalities to participate in the state set-aside program if they (1) have populations greater than 70,000 and (2) do not already have a program where the MBE set-aside exceeds 6.25%. It subjects them to requirements in existing law concerning goal-setting and reporting, but does not require them to inform the DAS commissioner of contracts to be set aside at the time bid documents are

made available. Municipalities covered by the bill must also ensure compliance by contractors and subcontractors awarded set-aside contracts.

According to the 2010 census, Danbury, New Britain, Norwalk, Stamford, and Waterbury would be covered by the bill. (Bridgeport, Hartford, and New Haven have set-aside programs that meet the bill's requirements for an exemption.) It is unclear if the state can extend the set-aside program to these five municipalities without a disparity study (see BACKGROUND: *Judicial Review of Set-Aside Programs*).

### **§§ 3, 7-9 — JANITORIAL PROGRAM**

The bill expands the janitorial work program for people with a disability or disadvantage to include services deemed appropriate by the DAS commissioner. Such services include laundry and cleaning services, mail supply room staffing, data entry, call center staffing, and other services specified by the DAS commissioner. The commissioner must post on the department's website a list of the services he deems appropriate to include in the program.

Under the program, the DAS commissioner awards contracts to qualified partnerships, which are commercial janitorial (or, under the bill, service) contractors and community rehabilitation programs, designated by the Connecticut Community Providers Association, that meet certain criteria. Under current law, the contractor must employ at least 200 people who perform janitorial work in Connecticut. The bill instead requires the contractor to employ at least 200 people who perform janitorial work or contractual services in Connecticut.

The Judicial Branch and Board of Regents for Higher Education may also participate in the program. The law establishes requirements concerning (1) bidding on and awarding the contracts and (2) reporting by qualified partnerships.

### **§§ 10-15 — SELECTION OF MANUFACTURERS AND FABRICATORS**

The bill revamps the process for contracting with manufacturers and metal fabricators for DAS-administered public works projects.

Current law does not specifically address contracts with these entities, but in practice, manufacturers and fabricators are typically selected by, and enter into contracts with, the general contractor or construction manager at-risk.

The bill instead requires DAS, rather than the general contractor or construction manager at-risk, to select and enter into contracts with manufacturers and fabricators. DAS must (1) use the same process it uses under existing law for awarding consultant services contracts and (2) give a geographic preference to certain manufacturers and fabricators.

Under the bill, a “manufacturer” is a business entity that converts or conditions tangible personal property by changing its form, composition, quality, or character for (1) ultimate sale at retail or (2) use in manufacturing a product to be ultimately sold at retail. A “fabricator” is a business entity that makes, builds, creates, produces, or assembles components made of metal in a new or different manner. Manufacturer and fabricator services are professional services rendered by these entities, as well as incidental services that these entities and their employees are authorized to perform.

### ***Selection Process***

The bill requires DAS to select manufacturers and metal fabricators in generally the same manner as it selects consultants under existing law.

By law, DAS must establish selection panels to evaluate consultant services proposals (e.g., architectural services, professional engineers, accountants, and others) valued at more than \$300,000. The panels must submit a list of the most qualified firms to the DAS commissioner for his consideration. In doing so, the panel must follow criteria established by the commissioner and also consider the firm’s location relative to the project site and its knowledge of the state building and fire codes. Each panel is project-specific (i.e., a new panel is appointed for each project). The panel must forward at least three firms to the commissioner, except that it must forward all firms if it receives one or

two proposals.

The bill extends these requirements to manufacturer or fabricator services that cost more than \$300,000 (but it does not extend to them the preference for knowledge of the state building and fire safety codes). It similarly allows DAS to use an on-call process for manufacturers and fabricators. An on-call contract defines a broad range of consultant services (expanded by the bill to include manufacturer and fabricator services) and is generally valid for two to three years. An on-call contract is not connected to a specific project; rather, DAS subsequently issues task letters to firms with on-call contracts that identify a specific scope of services to be performed and the fee for those services.

### ***Contract Award***

The bill extends existing law's requirements for awarding consultant contracts to include contracts with manufacturers and fabricators. Under the bill, if the value of the services is expected to be \$300,000 or less, the commissioner must negotiate a contract, at compensation he determines is fair and reasonable to the state, with the manufacturer or fabricator he determines is most qualified. The commissioner must do the same for those projects for which a selection panel makes recommendations, except that he must negotiate first with the manufacturer or fabricator the panel ranked as most qualified. If the commissioner cannot enter into a contract with any of the manufacturers or fabricators recommended by the panel, he must document the reasons in writing and proceed to negotiate with the manufacturers or firms he determines are most qualified, at fair and reasonable compensation.

For "fast-track" projects, the bill requires the DAS commissioner, with certain exceptions, to select and interview at least three manufacturers or fabricators and negotiate a contract, at compensation he determines is fair and reasonable to the state, with the manufacturer or fabricator he determines is most qualified. The law establishes five fast-track projects: (1) a community court project, (2) the downtown Hartford higher education center project, (3) a correctional facility

project, (4) a juvenile detention center project, and (5) Connecticut State University System student dormitories.

### ***State Properties Review Board Approval***

The bill requires DAS contracts with manufacturers and fabricators to be approved by the State Properties Review Board if they cost more than \$100,000 (\$300,000 for higher education and Judicial Department projects). The approval requirement also applies to all DAS on-call contracts and to task letters if the task letter's value exceeds \$100,000. The board has 30 days to approve or disapprove the contract or task letter; the contract or letter is deemed approved if the board does not act within this time period. Under existing law, each of these requirements applies to DAS consultant contracts.

## **BACKGROUND**

### ***Person With a Disadvantage***

An individual is classified as a person with a disadvantage if (1) his or her income is no more than 200% of the federal poverty level for a family of four or (2) he or she is eligible for employment services under the federal Workforce Investment Act as the state Labor Department determines.

### ***Definitions of SBE and MBE***

An SBE is a business that (1) maintains its principal place of business in Connecticut, (2) had gross revenues of \$15 million or less during its most recent fiscal year, and (3) is independent. MBEs are small contractors owned by women, minorities, or people with disabilities who have managerial and technical competence and experience directly related to their principal business activities.

### ***Judicial Review of Set-Aside Programs***

In *City of Richmond v. Croson*, (488 U.S. 469), the U.S. Supreme Court held that race-based action by local and state governments requires strict scrutiny review under the Fourteenth Amendment's equal protection clause. To withstand strict scrutiny review, the government must demonstrate that the statute serves a compelling public interest and is narrowly tailored to meet that interest.

Regarding racial preferences or quotas in public contracting, the Court held that a public agency must show statistical evidence of a significant disparity between the number of qualified minority contractors willing and able to perform a particular service and the number actually hired by the agency or its prime contractors.

**COMMITTEE ACTION**

Government Administration and Elections Committee

Joint Favorable Substitute

Yea 14 Nay 0 (03/24/2014)